



REGULATORY AGENCY ACTION

Charles Westlund, and Robert Wilson.

The Commission is constitutionally authorized and has sweeping powers to license and discipline those within its jurisdiction. The Commission licenses promoters, booking agents, matchmakers, referees, judges, managers, boxers, martial arts competitors, and wrestlers. The Commission places primary emphasis on boxing, where regulation extends beyond licensing and includes the establishment of equipment, weight, and medical requirements. Further, the Commission's power to regulate boxing extends to the separate approval of each contest to preclude mismatches. Commission inspectors attend all professional boxing contests.

MAJOR PROJECTS:

1988 Neurological Examination Results. As part of its ongoing neurological examination program (see CRLR Vol. 8, No. 4 (Fall 1988) p. 43 and Vol. 8, No. 2 (Spring 1988) p. 41 for background information), the Commission recently released its statistics for neurological tests on boxers conducted between September 1, 1987 through August 1, 1988. Out of a total of 472 examinations administered, 15 failed the exam and 304 examinees had some neurological abnormalities.

The number of neurologists or neurosurgeons under contract with the Commission has increased. There are now two in San Diego, three in Los Angeles, one in the San Francisco/Oakland area, and two in the Sacramento area.

Ambulances at Boxing Contests. The recent ring death of boxer Ricardo Velazquez in San Jose has renewed the debate over whether the Commission should require ambulances to stand by during boxing contests. According to the Commission, the October 20 investigation of Velazquez' death revealed that the responding ambulance took approximately 20-25 minutes to arrive at the San Jose Civic Auditorium. The investigation also determined that the delay had no effect on the efforts to save Velazquez.

Although the Commission has previously considered requiring ambulances to be present at each boxing contest, no regulation has been proposed because of allegedly high costs. A Commission study indicates that the cost of an ambulance equipped with two certified paramedics (or, at a minimum, two uncertified attendants trained in basic life support) ranges from a high of \$171 per hour in the San Diego area to a low of \$100 per hour in the San Jose area. At its next meeting,

Commission staff will recommend that the Commission undertake a cost-benefit analysis to determine the feasibility of requiring ambulances to stand by at a boxing contest for three hours.

Regulatory Changes. At its December 16 meeting, the Commission held a hearing on the proposed addition of section 279 to Chapter 2, Title 4 of the California Code of Regulations (CCR), regarding the copying of any videotape made of a professional fight. The proposed regulation would require the promoter to obtain the name, address, and telephone number of any person who records all or part of a boxing contest on videotape. Additionally, the regulation would hold the promoter responsible for providing the Commission with a copy of any available videotape of a boxing contest. The Commission adopted proposed section 279, with the understanding that it will provide promoters with an appropriate consent form.

Also at the December meeting, the Commission adopted an amendment to section 220 of its regulations, regarding contracts to manage boxers. The proposed amendment would allow the Commission to approve a contract not executed on the Commission's printed form and entered into in another state by residents or non-residents of California. Previously, only non-residents could enter into management contracts on non-Commission forms and legally box in California. This amendment would make it easier for California residents to enter into boxer-manager agreements out of state and allow them to return to box in California.

At this writing, the Commission is preparing its rulemaking file on these changes for submission to the Office of Administrative Law (OAL).

On October 19, OAL notified the Commission of its disapproval of its proposed amendment of section 330 of its regulations. The Commission's proposal would have included Commission-appointed neurological examination physicians in the definition of boxing "officials". (See CRLR Vol. 8, No. 2 (Spring 1988) p. 42 for details.) OAL rejected the proposed amendment for lack of clarity.

On September 21, OAL disapproved the Commission's large rulemaking package which included the adoption of section 600; the amendment of sections 601, 603, 609, 613, 618, and 623; and the repeal of sections 602, 604-06, 610, 614-17, 619, and 622 of its regulations. OAL found that sections 601, 609, and 613

failed to satisfy the clarity standard in Government Code section 11349.1. OAL disapproved the repeal of section 622, regarding transportation expenses of contestants, because the Commission's rulemaking file did not support its need to repeal the rule.

LEGISLATION:

AB 112 (Floyd) would require the Commission to adopt regulations detailing the criteria for approving licensed physicians who attend boxing contests. At this writing, AB 112 is awaiting assignment to a policy committee.

RECENT MEETINGS:

Two recent Athletic Commission meetings scheduled for October 21 in Los Angeles and November 18 in San Jose were cancelled due to a lack of quorum.

FUTURE MEETINGS:

To be announced.

BUREAU OF AUTOMOTIVE REPAIR

Chief: Martin Dyer
(916) 366-5100

Established in 1971 by the Automotive Repair Act (Business and Professions Code sections 9880 *et seq.*), the Bureau of Automotive Repair (BAR) registers automotive repair facilities; official smog, brake and lamp stations; and official installers/inspectors at those stations. Approximately 39,200 auto repair dealers are registered with BAR. The Bureau's other duties include complaint mediation, routine regulatory compliance monitoring, investigating suspected wrongdoing by auto repair dealers, oversight of ignition interlock devices, and the overall administration of the California Smog Check Program.

The Smog Check Program was created in 1982 in Health and Safety Code section 44000 *et seq.* The Program provides for mandatory biennial emissions testing of motor vehicles in federally designated urban nonattainment areas, and districts bordering a nonattainment area which request inclusion in the Program. BAR licenses approximately 22,000 smog check mechanics who will check the emissions systems of an estimated six million vehicles this year. Testing and repair of emissions systems is conducted only by stations licensed by BAR.

Approximately 130,000 individuals and facilities are registered with the Bureau. Registration revenues support



an annual Bureau budget of nearly \$34 million. BAR employs 433 staff members to oversee the Automotive Repair Program and the Vehicle Inspection Program.

The Bureau is assisted by a nine-member Advisory Board which consists of five public and four industry representatives. They are Gilbert Rodriguez, Louis R. Kemp, Vincent L. Maita, Herschel Burke, Alden P. Oberjuege, Joe Kellejian, Kathryn Lee, Jack Thomas, and William Kludjian.

MAJOR PROJECTS:

Certification of Third Party Dispute Resolution Processes. Pursuant to AB 2057 (Tanner) (Chapter 1280, Statutes of 1987), the Bureau is charged with developing regulations to govern the certification of arbitration processes used by automobile manufacturers to handle automobile warranty and lemon law disputes. BAR must establish a program to ensure that such processes comply with Business and Professions Code section 9889.70 *et seq.*, Civil Code sections 1793.2, 1793.25, and 1794, and Federal Trade Commission Rule 703.

California's new car "lemon law," which went into effect in 1983, provides that a manufacturer could be ordered to replace a car or refund its purchase price if, within the first year or 12,000 miles (whichever comes first), four or more repair attempts are made on the same problem, or the car is out of service for a total of more than thirty days while being repaired for any number of problems. The problems must be covered by the warranty and must substantially reduce the use, value, or safety of the vehicle; the buyer must notify the manufacturer directly about the problem; and the complaint must be submitted for decision to a qualified third party dispute resolution process. Under this law, a manufacturer selling cars in California is afforded protection under the Civil Code only if it provides an arbitration process which complies with the code sections listed above.

A semi-final draft of BAR's proposed regulations for the qualified dispute resolution process certification program was sent to interested parties for comment on November 15. Proposed sections 3396 to 3396.9, Chapter 16 of the California Code of Regulations (CCR), include definitions and set forth the information to be provided to the Bureau when an applicant files for certification; describe the duties of the manufacturer in providing a dispute resolution process; set the minimum standards and duties

of qualified processes; require a quarterly report describing cases closed during the quarter; require maintenance of separate files for each case; and provide for certification, review, and decertification of dispute resolution processes. Formal hearings on the draft will be scheduled so that the public may comment on the proposed regulations.

Once a process is certified, BAR will monitor the arbitration hearings held to settle disputes between buyers and manufacturers. If a process fails to follow guidelines set forth in the Civil Code, the manufacturer or its representative will be notified of the Bureau's intent to decertify the process within six months. The manufacturer must then prove to the Bureau, within the next six months, that it has corrected the deficiencies to BAR's satisfaction, or the resolution process will be decertified automatically.

Challenge to Inspection and Repair Manual Rejected. On October 3, the Office of Administrative Law (OAL) determined that section 9 of the Bureau's *Licensed Smog Check Inspection and Repair Manual 1987* is not a regulation which must be adopted pursuant to the Administrative Procedure Act (see CRLR Vol. 8, No. 4 (Fall 1988) p. 44 for details). The challenged section requires a two-part inspection procedure, and a complete retest if the vehicle fails either part on its first inspection. Although the retest procedure is not set forth in the CCR, OAL decided that it is adequately incorporated by reference into the CCR. OAL also recommended that BAR consider printing the retest procedure in the CCR, for the benefit of citizens who do not have access to the manual. (For further information on this ruling, see *supra* agency report on OFFICE OF ADMINISTRATIVE LAW.)

Regulatory Changes. On November 11, the Bureau published its proposal to adopt a new section in subchapter 1 of Chapter 33, Title 16 of the CCR. New section 3340.42.1 would establish standards for smog testing of gasoline-powered heavy-duty vehicles. Existing regulations do not provide for inclusion of heavy-duty vehicles in the Smog Check Program, nor do they contain standards for their smog testing. Heavy-duty vehicles are those having a gross vehicle weight rating of 8,500 pounds or more. BAR was scheduled to hold a December 27 hearing on this proposed regulation.

On August 24, the Bureau's proposal to adopt new sections 3363.1, 3363.2, 3363.3, and 3363.4, which would have established installation standards for ignition interlock devices (see CRLR

Vol. 8, No. 2 (Spring 1988) p. 43 for details), was disapproved by OAL. OAL rejected the proposed rules because BAR's rulemaking package did not satisfy the standards of authority, necessity, clarity, and reference contained in Government Code section 11349.1. BAR planned to resubmit these proposals in early January.

Also on August 24, OAL approved the Bureau's adoption of section 3340.35.1, which creates a temporary program to establish and evaluate the effectiveness of prohibiting cost-exceedance waivers unless a referee station concurs in the determination; section 3340.41.3, concerning invoice requirements for low-emissions service and adjustments performed as part of the Smog Check Program; and section 3362.1, prohibiting a vehicle engine change which degrades the effectiveness of the vehicle's emissions control system. OAL also approved amendments to section 3340.1, defining the term "bureau" as used in Article 5.5, Title 16 of the CCR; section 3340.15, repealing the requirement that Smog Check Program stations display licenses under glass or other transparent material; section 3340.30, establishing performance standards for qualified mechanics participating in the Smog Check Program; section 3340.35, clarifying that Smog Check Program certificates of compliance and noncompliance may be obtained only from BAR; section 3340.41, changing its title to "Test and Test Report"; section 3340.50, revising an incorrectly cited subsection in the Health and Safety Code; and section 3340.50.4, conforming BAR regulations to current law regarding Smog Check Program certificates for fleet owners. Finally, OAL approved BAR's repeal of sections 3340.20 and 3397-3397.43. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 44 and Vol. 8, No. 2 (Spring 1988) pp. 42-43 for details on these changes.)

BAR's proposed regulatory changes affecting Smog Check Program station and inspector licenses and licensing fees, and establishing certification, decertification, and recertification standards (see CRLR Vol. 8, No. 4 (Fall 1988) p. 44 and Vol. 8, No. 1 (Winter 1988) p. 44 for details), were rejected for the third time by OAL on November 4, after resubmission in early October. OAL determined that the "forms" required in sections 3340.25, 3340.32, and 3340.33 were not clearly identified in the regulatory text and therefore did not meet the clarity standard for rulemaking. BAR planned to resubmit its rulemaking package in early January.



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Proposals Developed for Mechanic Training. The Bureau has negotiated an interagency agreement with the California Employment Development Department's Employment Training Panel (ETP) to market a mechanic training program in response to concerns that mechanics must be better trained to keep up with technology. Such training is said to be essential in efforts to reduce air pollution. The ETP uses a small portion of California unemployment tax money to fund training courses so that the mechanics will remain employed.

Under the agreement, ETP will reimburse, on a per-student basis, a corporation or educational institution for the cost of operating a retraining program. The program must meet specified requirements: it must be designed to increase a mechanic's diagnostic and repair skills on computer-controlled vehicles. In addition, in order for the school to be reimbursed for training a particular mechanic, the mechanic must remain employed at the same place for ninety days after completion of the course. BAR is currently developing ETP mechanic training proposals through public and private organizations.

RECENT MEETINGS:

At its November 18 meeting, the Advisory Board discussed proposed increases in its licensing fees. SB 1997 (Presley), signed by the Governor on September 30, 1988 (see CRLR Vol. 8, No. 4 (Fall 1988) p. 44 for details), authorizes the Bureau to increase its licensing fees for Smog Check Program mechanics, inspectors, and stations. Bureau Chief Martin Dyer stated that due to the number of licensees and the amount of time BAR staff spends in processing paperwork, answering questions, and processing data, the fees currently charged do not meet the Bureau's costs in providing such licenses. Dyer suggested increasing the fees to \$59 per year for inspectors, \$72 per year for mechanics, and \$95 per year for stations, which would approximately cover these costs. The Board's industry members were concerned that the mechanic's shop would swallow the cost (which would ultimately be passed on to the consumer), and proposed that increasing the cost of a smog certificate to \$6 would raise much of the revenue needed. Members of the Training Advisory Board agreed with this proposal, but indicated that if more funds are needed to meet the Bureau's \$45 million budget, they would accept a gradual fee increase in steps. The matter was tabled until the

February meeting in order to receive input from the Automobile Club and the Automotive Service Council.

FUTURE MEETINGS:

To be announced.

BOARD OF BARBER EXAMINERS

Executive Officer: Lorna P. Hill
(916) 445-7008

In 1927, the California legislature created the Board of Barber Examiners (BBE) to control the spread of disease in hair salons for men. The Board, which consists of three public and two industry representatives, regulates and licenses barber schools, instructors, barbers, and shops. It sets training requirements and examines applicants, inspects barber shops, and disciplines violators with licensing sanctions. The Board licenses approximately 22 schools, 6,500 shops, and 21,500 barbers.

MAJOR PROJECTS:

Proposed Nonsubstantive Changes to BBE Regulations. At its October 31 meeting, BBE approved Executive Officer Lorna Hill's proposal to recodify the articles and subheadings in Chapter 3, Title 16 of the California Code of Regulations (CCR). Presently, the structure and order of Chapter 3 is unclear. Similar subject matter is found in several different sections; subject headings do not accurately reflect the subjects covered in each section; too many subjects are addressed in each section; and subject matter does not appear in a logical and sequential order. The approved changes renumber and reorder almost all of the Board's existing regulations in an attempt to correct these problems. BBE's staff is in the process of compiling its rulemaking file on the changes for submission to the Office of Administrative Law.

Regulatory Changes Effective October 20, 1988. At its October meeting, the Board distributed brochures describing numerous substantive and nonsubstantive changes to its regulations which became effective on October 20. (See CRLR Vol. 8, No. 2 (Spring 1988) pp. 44-45 for background information on all changes.) The substantive changes adopted by BBE include the addition of sections 203.5 (abandonment of applications) and 204.2 (student enrollments); and amendments to sections 213 (uniforms during college hours), 213.1 (labels on bottles and containers), 214.1 (trans-

fers), 216.1 (records), 217.1(a) (required course instruction hours) 219.2 (barber students: 400-hour courses), 219.3 (instructor training program), 224 (display of shop license and certificates), 236.1 (charge for dishonored checks), 246.3 (attendance: changes in employment), 247 (approval of apprentice trainer; trainer requirements), and 300 (administrative fines).

Also effective on October 20 is an amendment to section 203.2, which allows an unsuccessful examinee to appeal within fifteen days following receipt of his/her examination results if there was significant procedural error in the examination process; evidence of adverse discrimination; or evidence of substantial disadvantage to the examinee. The appeal must be made in a written letter which specifies the grounds upon which the appeal is based. BBE must respond to the appeal in writing.

LEGISLATION:

Future Legislation. At its October meeting, BBE heard public testimony regarding its proposal to seek legislation to authorize fee increases beyond the currently allowed level. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 45 for background information.) Executive Officer Hill believes the fee increases are necessary to guarantee BBE's stability until approximately 1995, and enable it to meet its budget demands.

RECENT MEETINGS:

At its October meeting in San Jose, BBE decided to withdraw certification of the Chino Youth Training Program's 1500-hour barber course. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 45 and Vol. 8, No. 3 (Summer 1988) p. 48 for background information.) BBE withdrew its conditional certification of the program based on a report submitted by a special committee set up by BBE to review the program's curriculum. Chino Youth is expected to appear before the Board in four to six months with a revised curriculum.

Also at its October meeting, Executive Officer Hill discussed several conferences she has recently attended, including the Forum for Barber and Cosmetology Boards. This forum, previously called the Merged Board Symposium, was attended this year by BBE for the first time. The Board of Cosmetology has been a participant at previous conferences. The forum is held annually for executive officers and members of both types of boards. This year, the forum addressed various types of barber/cosmetology board structures, including